

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0446P

**Withholding Tax
Calendar Years 1994, 1995, and 1996**

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ISSUE(S)

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer operates as a general contractor on a job to job basis and utilizes subcontractors to perform most of its work. Taxpayer performed work for two jobs in Indiana.

The audit examination of the taxpayer's books and records, revealed that it made payments to non resident contractors that performed work in Indiana and were not registered with the Secretary of State as required under 45 IAC 1-1-214.

The audit adjusted withholding tax for payments made to nonresident contractors that were not registered with the Department of Revenue for work performed in Indiana.

ISSUE

I. **Tax Administration** – Penalty

Taxpayer protests the imposition of penalty.

DISCUSSION

Taxpayer states it has made every attempt at compliance with the laws and regulations of Indiana and every effort was made to file and pay taxes on a timely basis. Further, taxpayer states it registered to do business in the state and called the Department for information regarding all taxes, and very specifically for a construction company. The agent never informed them of the regulations concerning sales tax on change orders, nor gross receipts tax. It also fully cooperated with the auditor and supplied her with every document needed to perform a complete audit.

45 IAC 1-1-213 clearly states that Indiana gross income tax is required to be withheld from any and all payments made to a nonresident contractor for performance of any work or services which are taxable to the State of Indiana. 45 IAC 1-1-216 defines withholding agent as any person, firm, organization or governmental entity of any kind making payments to nonresident contractors and prime contractors making payment to sub-contractors are considered to be withholding agents.

Taxpayer did not comply with the regulations nor did it provide reasonable cause to allow the Department to waive the penalties assessed.

FINDING

Taxpayer's protest is denied.